

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

SPENCER NEAL,)	CASE NO.: _____
)	
Plaintiff,)	JUDGE _____
)	
vs.)	<u>COMPLAINT FOR INJUNCTIVE</u>
)	<u>RELIEF:</u>
LAFAYETTE BLUENOSE, LLC,)	
)	<u>1ST CAUSE OF ACTION:</u> For Denial of
Defendant.)	Access by a Public Accommodation in
)	Violation of the Americans with Disability
)	Act of 1990 (“Title III” and “ADA”),
)	42 U.S.C. §§ 12181 <i>et seq.</i>

Plaintiff SPENCER NEAL Complains of Defendant LAFAYETTE BLUENOSE, LLC,
and alleges as follows:

INTRODUCTION:

1. This is a civil rights action for discrimination against persons with physical disabilities, of which plaintiff is a member of, for failure to remove architectural barriers structural in nature at Defendant’s property, a place of public accommodation, thereby discriminatorily denying plaintiff access to, the full and equal enjoyment of, opportunity to participate in, and benefit from, the goods, facilities, services, and accommodations thereof. Plaintiff seeks injunctive relief and damages pursuant to the Americans with Disability Act of 1990 (“title III” AND “ADA”), 42. U.S.C. §§ 12181 *et seq.*

2. Plaintiff SPENCER NEAL is a person with physical disabilities who, on or about July 23, 2021 through July 26, 2021, was an invitee, guest, patron, or customer at Defendant’s property, which houses the BLUENOSE INN, located at 90 Eden Street, Bar Harbor, ME 04609. At said time and place, Defendant failed to provide proper legal access to the property, which is a public accommodation and/or public facility. The denial of access was in violation of federal

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1 legal requirements, and NEAL suffered violations of his civil rights to full and equal access and
2 was embarrassed and humiliated.

3 **JURISDICTION AND VENUE:**

4
5 3. **Jurisdiction:** This Court has jurisdiction of this action pursuant to 28 U.S.C.
6 §1331 for violations of the Americans with Disabilities Act of 1990, 42 U.S.C. §12101, et seq.

7 4. **Venue:** Venue is proper in this court pursuant to 28 U.S.C. §1391(b) and is
8 founded on the facts that the real property which is the subject of this action is located in this
9 district, in the City of Bar Harbor, County of Hancock, State of Maine and that plaintiff's causes
10 of action arose in this district.

11
12 **PARTIES:**

13 5. Plaintiff SPENCER NEAL is a "physically handicapped person," a "physically
14 disabled person," and a "person with physical disabilities." (Hereinafter the terms "physically
15 disabled," "physically handicapped" and "person with physical disabilities" are used
16 interchangeably, as these words have similar or identical common usage and legal meaning.)
17 NEAL is a "person with physical disabilities," as defined by all applicable United States laws.
18 NEAL requires the use of a wheelchair to travel about in public. Consequently, NEAL is a
19 member of that portion of the public whose rights are protected by federal accessibility law.
20

21 6. Upon information and belief, Defendant LAFAYETTE BLUENOSE, LLC, a Maine
22 Limited Liability Company, is the owner and operator, lessor and/or lessee, or agent of the
23 owner, lessor and/or lessee, of the building and/or buildings which constitute a public facility in
24 and of itself, occupied by the BLUENOSE INN, a public accommodation, located at/near 90
25 Eden Street, Bar Harbor, ME 04609, and subject to the requirements of federal law requiring full
26 and equal access to public facilities pursuant to the Americans with Disability Act of 1990
27

1 (“TITLE III” AND “ADA”), 42. U.S.C. §§ 12181 *et seq.*, and to all other legal requirements
 2 referred to in this complaint.

3 7. At all times relevant to this complaint, Defendant is the lessee, or agent of the
 4 lessee, and/or lessor, of said premises, and owns and operates the subject BLUENOSE INN as a
 5 public facility at/near 90 Eden Street, Bar Harbor, ME 04609. The business, a BLUENOSE INN,
 6 is open to the general public and conducts business therein. The business operating on said
 7 premises is a public accommodation subject to the requirements of federal and state accessibility
 8 law.
 9

10 8. At all times relevant to this complaint, Defendant is the landlords/lessors,
 11 tenants/lessees and the owners and operators of the subject hotel, a public accommodation
 12 located at/near 90 Eden Street, Bar Harbor, ME 04609. As such, Defendant is jointly and
 13 severally responsible to identify and remove architectural barriers pursuant to Code of Federal
 14 Regulations section 36.201(b), which states in pertinent part:
 15

16 **§ 36.201 General**

17 (b) Landlord and tenant responsibilities. Both the landlord
 18 who owns the building that houses a place of public
 19 accommodation and the tenant who owns or operates the place of
 20 public accommodation are public accommodations subject to the
 21 requirements of this part. As between the parties, allocation of
 22 responsibility for complying with the obligations of this part may
 23 be determined by lease or other contract.

24 CFR §36.201(b)

25 9. Plaintiff does not know the true names of Defendant, its business capacities, its
 26 ownership connection to the property and business, nor their relative responsibilities in causing
 27 the access violations herein complained of. Plaintiff is informed and believes that the Defendant
 28 herein is a public accommodation, and is the agent, ostensible agent, master, servant, employer,

1 employee, representative, franchisor, franchisee, partner, and associate, or such similar capacity,
2 of each of the other defendants, if any, and was at all times acting and performing, or failing to
3 act or perform, within the course and scope of his, her or its authority as agent, ostensible agent,
4 master, servant, employer, employee, representative, franchiser, franchisee, partner, and
5 associate, or such similar capacity, and with the authorization, consent, permission or ratification
6 of each of the other defendants, and is responsible in some manner for the acts and omissions of
7 the other defendants in legally causing the violations and damages complained of herein, and
8 have approved or ratified each of the acts or omissions of each other defendant, as herein
9 described.
10
11

12 **PRELIMINARY FACTUAL ALLEGATIONS:**

13 10. Defendant is the entity that is a public accommodation that owns, leases (or
14 leases to), or operates, the BLUENOSE INN, located at 90 Eden Street, Bar Harbor, ME 04609.
15 The BLUENOSE INN and each of its facilities are places “of public accommodation” subject to
16 the requirements of the Americans with Disability Act of 1990 (“TITLE III” AND “ADA”), 42.
17 U.S.C. §§ 12181 *et seq.* On information and belief, said facility has undergone “alterations,
18 structural repairs and additions,” each of which has subjected the BLUENOSE INN to
19 handicapped access requirements.
20

21 11. Plaintiff SPENCER NEAL is a person with a disability. NEAL is a “physically
22 disabled person,” as defined by all applicable United States laws. NEAL is paralyzed and
23 requires the use of a wheelchair for mobility and to travel in public.
24

25 12. At all times referred to herein and continuing to the present time, Defendant
26 advertised, publicized and held out the BLUENOSE INN as being handicapped accessible and
27 handicapped usable.
28

1 13. On or about July 23, 2021 through July 26, 2021, NEAL was an invitee and guest at
2 the subject BLUENOSE INN, arriving for purposes of obtaining lodging.

3 14. Upon his arrival, during his patronizing of the public accommodation, and upon his
4 exit of the facility, NEAL personally encountered architectural barriers which denied him the full
5 and equal access to the property.
6

7 15. Therefore, at said time and place, NEAL , who is a person with disabilities,
8 encountered the following inaccessible elements of the subject BLUENOSE INN which
9 constituted architectural barriers and a denial of the proper and legally required access to a public
10 accommodation to persons with physical disabilities. *By way of example and not as an*
11 *exhaustive inventory of Defendant's violations*, the following barriers to access were personally
12 encountered by NEAL within the facility's (1) parking, (2) lobby entry, (3) the lobby, (4) the
13 covered patio, (5) the gift shop, (6) the men's public restroom, (7) guestroom 140, (8) the stairs,
14 (9) the interior doors, (10) the vending area, (11) the other entrances to the facilities, (12) the
15 balcony area, (13) the breakfast building, (14) the men's public restroom inside the breakfast
16 building, (15) the pool and fitness building, (16) the men's public restroom inside the pool
17 building, (17) the fitness area, (18) the outdoor pool area, and (19) upon information and belief,
18 the other accessible guestrooms and public amenities throughout the hotel.
19
20

21 On personal knowledge, information and belief, other public facilities and elements too
22 numerous to list were improperly inaccessible for use by persons with physical disabilities.
23

24 16. At all times stated herein, the existence of architectural barriers at Defendant's
25 place of public accommodation evidenced "actual notice" of Defendant's intent not to comply
26 with the Americans with Disability Act of 1990 ("TITLE III" AND "ADA"), 42. U.S.C. §§
27 12181 *et seq.*, either then, now or in the future.
28

1 17. As a legal result of Defendant's failure to act as a reasonable and prudent public
2 accommodation in identifying, removing or creating architectural barriers, policies, practices and
3 procedures that denied access to plaintiff and other persons with disabilities, plaintiff suffered
4 damages as alleged herein.

5
6 18. As a further legal result of the actions and failure to act of Defendant, and as a
7 legal result of the failure to provide proper handicapped-accessible public facilities as set forth
8 herein, NEAL was denied his civil rights to full and equal access to public facilities. NEAL
9 suffered a loss of his civil rights and his rights as a person with physical disabilities to full and
10 equal access to public facilities, and further suffered from personal physical injury, shame,
11 humiliation, embarrassment, anger, disappointment and worry, expectedly and naturally
12 associated with a person with physical disabilities being denied access.

13
14 19. On information and belief, construction alterations carried out by Defendant has
15 triggered access requirements under Americans with Disability Act of 1990 ("TITLE III" AND
16 "ADA"), 42. U.S.C. §§ 12181 *et seq.*

17
18 20. NEAL, as described herein below, seeks injunctive relief to require the
19 BLUENOSE INN to be made accessible to meet the requirements of the Americans with
20 Disabilities Act, so long as Defendant operates and/or leases the BLUENOSE INN as a public
21 facility.

22
23 21. On information and belief, Defendant has been negligent in its affirmative duty
24 to identify the architectural barriers complained of herein and negligent in the removal of some
25 or all of said barriers.

26 22. Because of Defendant's violations, NEAL and other persons with physical
27 disabilities are unable to use public facilities such as those owned and operated by Defendant on
28

1 a “full and equal” basis unless such facility is in compliance with the provisions of the
2 Americans with Disabilities Act and other accessibility law as plead herein. Plaintiff seeks an
3 order from this court compelling Defendant to make the BLUENOSE INN accessible to persons
4 with disabilities.
5

6 23. Plaintiff is informed and believes and therefore alleges that Defendant caused the
7 subject property to be constructed, altered and/or maintained in such a manner that persons with
8 physical disabilities were denied full and equal access to, within and throughout said facility of
9 the BLUENOSE INN and were denied full and equal use of said public facility. Further, on
10 information and belief, Defendant has continued to maintain and operate said facility in such
11 conditions up to the present time, despite actual and constructive notice to such Defendant that
12 the configuration of the establishment and/or its building(s) are in violation of the civil rights of
13 persons with physical disabilities, such as plaintiff and the disability community. Such
14 construction, modification, ownership, operation, maintenance and practices of such public
15 facilities are in violation of law as stated in Americans with Disability Act of 1990 (“TITLE III”
16 AND “ADA”), 42. U.S.C. §§ 12181 *et seq.*
17
18

19 24. On information and belief, the subject public facility of the BLUENOSE INN denied
20 full and equal access to plaintiff and other persons with physical disabilities in other respects due
21 to noncompliance with requirements of accessibility law.
22

23 25. On personal knowledge, information and belief, the basis of Defendant’s actual
24 and constructive notice that the physical configuration of the facilities including, but not limited
25 to, architectural barriers constituting the BLUENOSE INN was in violation of the civil rights of
26 persons with physical disabilities, such as plaintiff, includes, but is not limited to,
27 communications with invitees and guests, owners of other establishments and businesses, notices
28

1 Defendant obtained from governmental agencies upon modification, improvement, or substantial
2 repair of the subject premises and other properties owned by the Defendant, newspaper articles
3 and trade publications regarding the Americans with Disabilities Act and other access laws,
4 public service announcements, and other similar information. Defendant's failure, under state
5 and federal law, to make the establishment accessible is further evidence of Defendant's
6 conscious disregard for the rights of plaintiff and other similarly situated persons with
7 disabilities. The scope and means of the knowledge of Defendant are within Defendant's
8 exclusive control and cannot be ascertained except through discovery.
9

10
11 26. Plaintiff will return to the subject BLUENOSE INN to patronize the facility, if it
12 is made fully accessible to a disabled person in a wheelchair, and to also avail himself of the
13 hotel's services.

14 27. Should the BLUENOSE INN become accessible, NEAL will visit it again because he
15 will travel through and/or to Hancock County on vacation while in Maine, in 2023 and/or 2024.
16

17 28. Furthermore, plaintiff intends to return to the BLUENOSE INN as an ADA tester on
18 an annual basis beginning in 2024, to ascertain whether Defendant removed the barriers to access
19 which are the subject of this litigation.

20 **I. FIRST CAUSE OF ACTION FOR DENIAL OF ACCESS BY A PUBLIC**
21 **ACCOMMODATION IN VIOLATION OF THE AMERICANS WITH**
22 **DISABILITIES ACT OF 1990 (42 U.S.C. §12101, *et seq.*)**

23 29. Plaintiff pleads and incorporates by reference, as if fully set forth again herein,
24 the allegations contained in paragraphs 1 through 28 of this complaint.

25 30. Pursuant to law, in 1990, the United States Congress made findings per 42 U.S.C.
26 §12101 regarding persons with physical disabilities, finding that laws were needed to more fully
27 protect:
28

1 some 43 million Americans with one or more physical or mental
 2 disabilities; [that] historically society has tended to isolate and
 3 segregate individuals with disabilities; [that] such forms of
 4 discrimination against individuals with disabilities continue to be a
 5 serious and pervasive social problem; [that] the nation's proper
 6 goals regarding individuals with disabilities are to assure equality
 7 of opportunity, full participation, independent living and economic
 8 self-sufficiency for such individuals; [and that] the continuing
 existence of unfair and unnecessary discrimination and prejudice
 denies people with disabilities the opportunity to compete on an
 equal basis and to pursue those opportunities for which our free
 society is justifiably famous.

9 31. Congress stated as its purpose in passing the Americans with Disabilities Act of
 10 1990 (42 U.S.C. §12102):

11 It is the purpose of this act (1) to provide a clear and
 12 comprehensive national mandate for the elimination of
 13 discrimination against individuals with disabilities; (2) to provide
 14 clear, strong, consistent, enforceable standards addressing
 15 discrimination against individuals with disabilities; (3) to ensure
 16 that the Federal government plays a central role in enforcing the
 17 standards established in this act on behalf of individuals with
 18 disabilities; and (4) to invoke the sweep of Congressional
 authority, including the power to enforce the 14th Amendment and
 to regulate commerce, in order to address the major areas of
 discrimination faced day to day by people with disabilities.

19 32. As part of the Americans with Disabilities Act of 1990, (hereinafter the "ADA"),
 20 Congress passed "Title III - Public Accommodations and Services Operated by Private Entities"
 21 (Section 301 42 U.S.C. §12181, *et seq.*). Among the public accommodations identified for
 22 purposes of this title was:

23 (7) PUBLIC ACCOMMODATION - The following private
 24 entities are considered public accommodations for purposes of this
 25 title, if the operations of such entities affect commerce -
 26 . . .
 (A) an inn, hotel, motel, or other place of lodging ***;

27 42 U.S.C. §12181(7)(A).

28 33. Pursuant to §302, 42 U.S.C. §12182, "No individual shall be discriminated
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1 against on the basis of disability in the full and equal enjoyment of the goods, services, facilities,
2 privileges, advantages, or accommodations of any place of public accommodation by any person
3 who owns, leases, or leases to, or operates a place of public accommodation.”
4

5 34. The specific prohibitions against discrimination set forth in §302(b)(2)(a),
6 42 U.S.C. §12182(b)(2)(a) are:

7 (i) the imposition or application of eligibility criteria
8 that screen out or tend to screen out an individual with a disability
9 or any class of individuals with disabilities from fully and equally
10 enjoying any goods, services, facilities, privileges, advantages, or
11 accommodations, unless such criteria can be shown to be
12 necessary for the provision of the goods, services, facilities,
13 privileges, advantages, or accommodations being offered;

12 (ii) a failure to make reasonable modifications in
13 policies, practices, or procedures, when such modifications are
14 necessary to afford such goods, services, facilities, privileges,
15 advantages or accommodations to individuals with disabilities,
16 unless the entity can demonstrate that making such modifications
17 would fundamentally alter the nature of such goods, services,
18 facilities, privileges, advantages, or accommodations;

17 (iii) a failure to take such steps as may be necessary to
18 ensure that no individual with a disability is excluded, denied
19 services, segregated or otherwise treated differently than other
20 individuals because of the absence of auxiliary aids and services,
21 unless the entity can demonstrate that taking such steps would
22 fundamentally alter the nature of the good, service, facility,
23 privilege, advantage, or accommodation being offered or would
24 result in an undue burden;

22 (iv) a failure to remove architectural barriers, and
23 communication barriers that are structural in nature, in existing
24 facilities . . . where such removal is readily achievable; and

24 (v) where an entity can demonstrate that the removal of
25 a barrier under clause (iv) is not readily achievable, a failure to
26 make such goods, services, facilities, privileges, advantages or
27 accommodations available through alternative methods if such
28 methods are readily achievable.

28 34. The acts of Defendant set forth herein were a violation of plaintiff's rights under the
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1 ADA, 42 U.S.C. §§ 12181 *et seq.*

2 35. The removal of the barriers complained of by plaintiff as hereinabove alleged
3 was at all times after January 26, 1992 “readily achievable” as to the subject BLUENOSE INN
4 pursuant to 42 U.S.C. §12182 (b)(2)(A)(i)-(iv). On information and belief, if the removal of all
5 the barriers complained of herein together was not “readily achievable,” the removal of each
6 individual barrier complained of herein was “readily achievable.” On information and belief,
7 Defendant’s failure to remove said barriers was likewise due to discriminatory practices,
8 procedures and eligibility criteria, as defined by §302(b)(2)(a)(i)-(iii); 42 U.S.C. §12182
9 (b)(2)(A)(i).
10
11

12 36. Per §301(9), 42 U.S.C. §12181 (9), the term “readily achievable” means “easily
13 accomplishable and able to be carried out without much difficulty or expense.” The statute
14 defines relative “expense” in part in relation to the total financial resources of the entities
15 involved. Plaintiff alleges that properly repairing, modifying, or altering each of the items that
16 plaintiff complains of herein were and are “readily achievable” by the Defendant under the
17 standards set forth under §301(9) of the Americans with Disabilities Act. Further, if it was not
18 “readily achievable” for Defendant to remove each of such barriers, Defendant has failed to
19 make the required services available through alternative methods which were readily achievable.
20
21

22 37. On information and belief, construction work on, and modifications of, the
23 subject BLUENOSE INN occurred after the compliance date for the Americans with Disabilities
24 Act, January 26, 1992, independently triggering access requirements under Title III of the ADA.

25 38. Pursuant to the Americans with Disabilities Act of 1990, 42 U.S.C. §12188, *et*
26 *seq.*, §308, plaintiff is entitled to the remedies and procedures set forth in §204(a) of the Civil
27 Rights Act of 1964, 42 U.S.C. 2000(a)-3(a), as plaintiff is being subjected to discrimination on
28

1 the basis of disability in violation of this title or has reasonable grounds for believing that he
2 is about to be subjected to discrimination in violation of §302. Plaintiff cannot return to or make
3 use of the public facilities complained of herein so long as the premises and Defendant's policies
4 bar full and equal use by persons with physical disabilities.

5
6 39. Per §308(a)(1) (42 U.S.C. 12188), "Nothing in this section shall require a person
7 with a disability to engage in a futile gesture if such person has actual notice that a person or
8 organization covered by this title does not intend to comply with its provisions." Pursuant to this
9 last section, plaintiff has not returned to Defendant's premises since on or about July 23, 2021
10 through July 26, 2021, but alleges that Defendant has continued to violate the law and deny the
11 rights of plaintiff and of other persons with physical disabilities to access this public
12 accommodation. Pursuant to §308(a)(2), "In cases of violations of §302(b)(2)(A)(iv) . . .
13 injunctive relief shall include an order to alter facilities to make such facilities readily accessible
14 to and usable by individuals with disabilities to the extent required by this title."
15

16
17 40. Plaintiff seeks relief pursuant to remedies set forth in §204(a) of the Civil Rights
18 Act of 1964 (42 U.S.C. 2000(a)-3(a)), and pursuant to federal regulations adopted to implement
19 the Americans with Disabilities Act of 1990, including but not limited to an order granting
20 injunctive relief and attorneys' fees. Plaintiff will seek attorneys' fees conditioned upon being
21 deemed to be the prevailing party.
22

23 Wherefore, plaintiff prays for relief and damages as hereinafter stated.

24 **II. PRAYER:**

25 Wherefore, Plaintiff SPENCER NEAL prays that this court grant relief and damages
26 as follows:

27 **I. PRAYER FOR FIRST CAUSE OF ACTION FOR DENIAL OF ACCESS BY A**
28 **PUBLIC ACCOMMODATION IN VIOLATION OF THE AMERICANS WITH**
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DISABILITIES ACT OF 1990 (42 U.S.C. §1 2101, *et seq.*)

1. For injunctive relief, compelling Defendant to make its BLUENOSE INN, readily accessible to and usable by individuals with disabilities; and to make reasonable modifications in policies, practice, eligibility criteria and procedures so as to afford full access to the goods, services, facilities, privileges, advantages and accommodations being offered.

2. For attorneys' fees, litigation expenses and costs of suit, if plaintiff is deemed the prevailing party; and

3. For such other and further relief as the court may deem proper.

DATED: June 6, 2023

Respectfully submitted,

SHAHEEN & GORDON, P.A.

/s/ ALEXANDER E. SPADINGER

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Respectfully submitted,

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SPENCER NEAL